

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner and her husband were separated for a few months in late 2004 and early 2005. In January of 2005,

the petitioner's husband had a heart attack and was found eligible for General Assistance (GA) benefits. This was his ninth heart attack. Each time he has had an attack, he has recovered and returned to work. It was during his several periods of recovery at home that he had received EP benefits to care for his wife. Although he was in rehabilitation he was still able to do light lifting and other light chores needed by the petitioner.

3. On March 9, 2005 the petitioner's husband had an appointment to discuss his GA benefits with the worker who had been assisting both of them for the last four years. The petitioner went with him to the appointment and they told the worker that they were getting back together again because she could help to take care of him. At that time the petitioner supplied two reports on her husband's medical condition dated February 18, 2005 and March 7 2005. The February report said that he would be unable to work indefinitely and that he was scheduled for a catheterization in March. The March report said he would be unable to work for an estimated six month period due to a recent myocardial infarction with angioplasty. These reports were prepared on forms asking for assistance with GA and Food Stamps.

4. There is no dispute that during the course of the interview, the petitioner told the worker that she wanted to apply again for EP benefits. Although the worker was aware that the petitioner had a history of receiving EP benefits to hire her husband as her caretaker when he was home and unable to work, she assumed in this instance that it was actually the husband who was asking for EP benefits to have his wife care for him because the petitioner had talked about the reason for the reunion being her desire to help him out following the heart attack. There followed a discussion during which the petitioner understood the worker to say that she would not be eligible because "a disabled person could not be the caretaker of a disabled person." The worker agrees that she told the petitioner that "she could not get a check because she was getting Social Security" by which she meant to say that the petitioner's could not be paid as her husband's caretaker. The worker thought the petitioner understood what she was saying. The petitioner, in fact, thought the worker was telling her husband he could not be paid as her caretaker because she was getting Social Security benefits. The petitioner's belief is reasonable and understandable in light of the fact that she had always applied only for EP benefits for herself to hire her husband

as caretaker during periods when he was unable to work and because the program itself can be confusing as to who the recipient of the benefits actually is.

5. Although the petitioner was confused as to why she was no longer eligible to get EP benefits, she trusted that the worker knew the rules and was giving her correct information. The worker's statement to the petitioner that she was not eligible to get a check dissuaded the petitioner from filing a written application for the benefits.

6. A couple of months later the petitioner was talking to her minister about her family's difficult financial situation. She told him that she was confused as to why she could not get EP benefits like she used to but thought it had something to do with the fact that her husband was now considered a disabled person by DCF. The minister pointed out to her that her husband was not "totally disabled" and encouraged her to pursue the application.

7. The petitioner took the minister's advice and left a note for her worker on May 12, 2005 saying as follows:

As by your phone conversation, you stated that the note we brought you did not state that [husband] was totally disabled at this time, just unable to work. Therefore, we are entitled to essential person program, because you said to us and I quote "one disabled person can't take care of another." If he is not disabled as you stated then we must qualify for essential person check as to

our income and expenses. Could you please check out this matter and get back to me. Thank you.

8. The worker responded to that note by sending EP application forms with the following note:

Per your request I have enclosed EP forms. [Petitioner], please complete the 202 booklet applying for EP with [husband] as your EP. Also included are the DSW 202EPF for you to complete and for [husband] to also sign, and a section for the doctor to complete and sign, and a DSW 202EPF for [husband] to complete and sign and he doctor complete and sign. "Please return as soon as possible. Thank you."

The top of the forms accompanying this note were filled out by the worker and indicated that the application was for an essential person to help the petitioner which was to be her husband.

9. Shortly after receiving these forms, the petitioner called the worker to ask her if she now agreed that they were eligible because her husband was not totally disabled. The petitioner says that the worker asked her if anything had changed since she had spoken with her in March. The petitioner said nothing had changed but that her husband was going to apply for Social Security disability benefits to try to get some income. The petitioner says she then asked the worker if the decision would be any different if nothing had changed and whether it would be a "waste of time" to get all the certifications needed to submit the application. The

petitioner says that the worker told her that if nothing had changed, "this phone conversation will do" and there was no reason to file the application. The worker does not recall saying anything of that sort on that day. Her only recollection of the entire conversation was that she told the petitioner to file the application.

10. Following her conversation with the worker, the petitioner concluded that she would be turned down again and that it would be pointless to file an application. She did not in fact file the application. The petitioner's husband did apply for Social Security benefits on May 27, 2005.

11. Having heard nothing on the Social Security claim, the petitioner went with her husband on August 18, 2005 to the DCF office to apply for GA because they did not have enough money to live on. Because their regular worker was on vacation, they were assisted by a different worker (a veteran of twenty-five years at the Department). The petitioner explained to the new worker that her husband needed GA because she had been told earlier in the year that she was not eligible for EP benefits. The new worker replied, "Who told you that you were not eligible for EP?" She advised the couple to file an application immediately and told them that as long as her husband had not been found eligible for Social

Security disability benefits he could be paid as the essential person. She said that she would investigate what had happened earlier but left it to her supervisor to follow through with that investigation.

12. The petitioner quickly filed her application and supporting materials and was found to be eligible to receive EP benefits to pay her husband as her caretaker based on that application at the end of August, 2005. Thereafter, the petitioner wrote to the supervisor of her regular worker explaining that she had tried to file this application back in March and May but had been discouraged from doing so. She asked that her benefit be granted back to March. Although DCF does not dispute that the petitioner would have been eligible in March and May if she had filed her applications, DCF refused to grant her benefits for lack of an application and the petitioner filed this appeal on September 26, 2005.

13. In light of the petitioner's precarious financial situation, her history of following through with applications before this time period, and her quick filing of an application when she was told she would likely be eligible in August of 2005, the petitioner's testimony recounted in paragraph nine above regarding her mid-May conversation with the worker is found to be entirely credible. The worker's

testimony is found to lack credibility in that it contained no detail about the questions actually asked that day and the ensuing discussion. It is also found that the petitioner reasonably relied on the statements of the worker to believe that she was ineligible for EP benefits and that filing a decision would be futile.

ORDER

The decision of DCF is reversed and the petitioner should be found eligible for EP benefits back to March 9, 2005.

REASONS

The petitioner has been found eligible to have her husband paid as her EP under the AABD-EP program because he is not able to work outside the home, has not himself been determined by the Social Security Administration to be disabled under SSI rules and because he provides medically necessary personal services to her. See W.A.M. § 2751 et seq. DCF does not dispute that the same set of circumstances existed from March through August of 2005 and that the petitioner would have been eligible for services if she had filed an application any time during this period.

The Department's regulations in the AABD-EP program require that "a person who wants cash assistance payments for an eligible spouse or another EP must file an application." W.A.M. § 2711. The fact in this matter is that the petitioner did not file an application until August 8, 2005. The petitioner argues that the reason she did not file an application was that the worker told her in advance of filing the application on two occasions that she would not be eligible for those services.

The petitioner argues that DCF should be prevented from denying her retroactive eligibility for benefits in spite of the above regulation and her failure to file an application because her situation meets the elements for "equitable estoppel" set forth by the Vermont Supreme Court, namely:

- (1) the party to be estopped must know the facts;
- (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel must be ignorant of the true facts;
- (3) the party asserting estoppel must be ignorant of the true facts; and

- (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped.

Stevens v. D.S.W., 159 Vt. 408, 421,
620 A.2d 737 (1992)
Citing Burlington Fire Fighters'
Ass'n v. City of Burlington. 149 Vt.
293, 299, 543 A.2d 686, 690-691
(1988)

The first criteria requires the party to be estopped, in this case the worker at DCF, to know the relevant facts. While the worker may have been confused about the petitioner's particular situation, there are facts about DCF's own application and eligibility process which the worker certainly knew or should have known that played a major role in the petitioner's loss of benefits.¹ As an experienced and trained worker she knew that DCF's own regulations require an application to determine eligibility for benefits and contemplate an interview to clear up any ambiguous facts on the application before any decision is made on eligibility:

An applicant statement of need is the **main source** of facts used to make a decision on his or her application . . . The statement of need is the applicant's written

¹ It is not clear whether or not the DCF worker understood the definition of an essential person at W.A.M. 2751. However, that possible mistake was not ultimately what led to the petitioner's plight.

record, on a Department form, of the facts about his or her situation as related to AABD-EP eligibility tests.

W.A.M. § 2712.2 (Emphasis supplied.)

An interview is a face-to-face meeting between the applicant . . . and a Department employee **to review the applicant's statement and resolve any problems or questions about his or her situation** and the eligibility tests. . . An interview is not necessary for an AABD-EP eligibility decision. . . An interview may be helpful, however, to work out complex eligibility test problems or to **help an applicant who has trouble understanding eligibility rules** or in giving written information.

W.A.M. § 2712.3 (Emphasis supplied.)

Under DCF's own regulatory scheme, a worker may not make a decision on the eligibility of a client unless and until she makes a written application. It is the facts put forth in the written application that are to be used in making the decision. The application contains a set of specific questions designed to elicit all the information needed to make an eligibility determination and to avoid confusion. After the written application is received, the worker may have a conversation with the applicant to clear up any remaining ambiguities. Although it may seem expedient or even helpful to talk about eligibility with a client before the application is filed, the regulations make it clear that eligibility decisions are not to be relayed to the client absent a written application. The regulations provide that

the decision as well must be in writing so the applicant can clearly understand the basis for the decision and be advised of her appeal rights. See W.A.M. §§ 2714.1 and 2714.2.

In this case, the worker initially told the petitioner in March that she would not be eligible for EP benefits based on her situation. She told the petitioner again in May that she would not be eligible for benefits if her situation had not changed. The worker knew (or should have known) that she could not orally take information on eligibility or orally relay a decision to the petitioner under DCF's own regulations. Since the DCF worker knew these facts, it must be found that the first element of estoppel has been met in this situation.

The second element examines whether the worker intended that her statements be relied upon by the petitioner or whether the petitioner had a right to believe that the worker intended the reliance. Without a doubt, workers are the public face of DCF. They are the persons who inform clients of the requirements for eligibility and of their rights and obligations and are understood by clients to be spokespersons for DCF. See Stevens, supra at 413, citing Lavigne v. Department of Social Welfare, 139 Vt. 114, 423 A. 2d. 842 (1980). The petitioner had every right to believe that she

could rely on oral statements made to her by the DCF worker about her lack of eligibility and that she would get no different decision from a written application, making filing one futile.

The third element to be determined is whether the petitioner was ignorant of her right to file an application before obtaining an eligibility determination. There is nothing in the record which would support any finding that the petitioner knew that it was improper for the worker to make an oral determination of her eligibility after orally discussing her situation with her. There is nothing in the record indicating that the petitioner knew that she had a right as well to a written decision containing her appeal rights. It must be found that the petitioner meets this test because she was ignorant of the true facts.

Finally, there must be a determination as to whether the petitioner relied to her detriment on the statements made to her by the worker. The facts show that she did not follow through on applications on two occasions because the worker indicated to her that she would not meet eligibility requirements for EP benefits. The facts also show that the petitioner would have been eligible for benefits if she had filed a written application at any of the two prior times at

issue in March and May. The petitioner obviously suffered a detriment in losing between \$1,000 to \$1,500 worth of benefits at a time when she and her husband were financially struggling solely because she did not follow through with those written applications.

The petitioner has shown that her situation meets the four elements for estopping DCF from denying her benefits for lack of a written application. The final inquiry is whether the injustice to the petitioner warrants preventing DCF from enforcing its regulation and whether estoppel will promote fairness in this situation. Stevens, supra at 419. The petitioner's loss of basic welfare level benefits for almost five months when she was struggling to survive is an injustice of sufficient magnitude to justify any impact this estoppel decision might have on the public policy requiring a written application. This decision also promotes fairness for all applicants in that it emphasizes for all workers the need to take written applications and to make written decisions on eligibility issues as required under the regulations. The practice engaged in by this worker may be employed by others in the Department and, while informal assessments may seem to some to prevent needless effort and paper shuffling, this case demonstrates all too well how such

informal processes can also lead to serious eligibility errors. As the petitioner has met all the requirements necessary to estop DCF from barring her eligibility due to her failure to follow its rule, the Board has the power to act equitably to reverse DCF's decision denying the petitioner's request for retroactive payments and award her benefits from the date she first attempted to obtain eligibility on March 9, 2005. Stevens, supra at 416.

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